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BEFORE THE

**Federal Communications Commission RECEIVED**

WASHINGTON, D.C. 20554

OCT - 6 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Telecommunications Services Inside Wiring,	)	CS Docket No. 95-184
Customer Premises Equipment	)	
	)	
In the Matter of	)	
	)	
Implementation of the Cable Television	)	
Consumer Protection and Competition Act of	)	MM Docket No. 92-260
1992,	)	
	)	
Cable Home Wiring	)	
	)	
To: The Commission	)	

**REPLY COMMENTS  
OF  
THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE**

Pursuant to Section 1.415 of the Commission's Rules and Regulations, the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Reply Comments in response to Comments filed in the above-captioned proceeding. NRTC, as a Multichannel Video Programming Distributor ("MVPD") under the Commission's rules,<sup>1/</sup> urges the Commission to recognize that entry into the video delivery market in Multiple Dwelling Units ("MDUs") is hampered by the inaccessibility of inside wiring, including "home run" wiring. NRTC urges the Commission to grant

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<sup>1</sup> 47 C.F.R. § 76.1000(d). See also, 47 C.F.R. § 76.64(d), 76.61(a), and 76.905(d).

MVPDs maximum access to MDU buildings and individual subscriber units in order to foster competition and enhance consumer choice.

## **I. BACKGROUND**

1. NRTC is a nonprofit cooperative association comprising 521 rural electric cooperatives and 231 rural telephone systems located throughout 48 states. NRTC's mission is to assist its members and affiliates in meeting the telecommunications needs of more than 60 million American consumers living in rural areas. Through the use of satellite distribution technology, NRTC is committed to extending the benefits of information, education and entertainment programming to rural America -- on an affordable basis and in an easy and convenient manner -- just as those services are available in more populated areas of the country. In short, NRTC seeks to ensure that rural Americans receive the same benefits of the information age as their urban counterparts.

2. In 1992, NRTC entered into an agreement with Hughes Communications Galaxy, Inc., the predecessor in interest to DirecTV, Inc., to launch the first high-powered DBS service offered in the United States. NRTC members and affiliates invested more than \$100 million to capitalize the launch, and in return received distribution rights for DirecTV programming ("DirecTV®") in specific regions of the country. Just three years after project launch, NRTC, its members, and affiliated companies market and distribute up to 175 channels of popular cable and broadcast programming to more than 600,000

rural households equipped with 18" DBS receiving antennas. Additionally, using C-Band technology, NRTC and its members market and distribute packages of satellite-delivered programming, called "Rural TV®" to some 70,000 Home Satellite Dish ("HSD") subscribers throughout the country.

## **II. REPLY COMMENTS**

3. NRTC commends the Commission for its efforts to establish rules promoting competition between MVPDs seeking to serve MDUs. However, the Commission's proposed rules fall short of maximizing the prospects for competition between alternative MVPDs and incumbent providers. The Commission's proposed rules only apply in the limited situation where an incumbent provider, usually a cable operator, does not, or will not at the conclusion of a 90-day notice period, have a legally enforceable right to remain on the premises. Even in this discrete situation, the Commission's proposed rules for the disposition of home run wiring fall short of providing consumers the full choice of selecting their MVPD. The most efficient way for the Commission to promote entry by other MVPDs would be to move the cable demarcation point to the cable lockbox so that the existing cable home wiring rules could govern the entirety of the wiring dedicated to an individual subscriber's unit.

4. The proposed rules alone will not foster competition for MVPDs seeking to serve MDUs since they would not apply where the incumbent provider has a

contractual, statutory or common law right to maintain its home run wiring on the property. Further Notice at ¶ 34. For example, state mandatory access statutes often may provide the incumbent cable operator ownership of "all wiring and equipment used in any installation or upgrade of a CATV system in a multiple dwelling premise." Consumer Electronics Manufacturers Association ("CEMA") Comments at 9, citing to Pa. Cons. Stat § 250.503-B. The Commission itself has noted that up to 20 states have access statutes. Further Notice at ¶ 29. As noted by Media Access Project ("MAP") and the Consumers Federation of America ("CFA"), these limitations appear to contradict the intent of Section 207 of the Telecommunications Act of 1996 which requires the Commission to preempt "restrictions that impair a viewer's ability to receive video programming services" through DBS dishes and broadcast and MMDS antennas. MAP and CFA Comments at 3. DirecTV and MAP urged the Commission to consider the Section 207 requirement along with the current proceeding. DirecTV Comments at 4; MAP and CFA Comments at 3. NRTC believes that all consumers, including those living in MDUs, should be able to subscribe to DBS service if they choose, but the Commission's proposed home run and home wiring rules are limited and do not ensure consumer choice. NRTC urges the Commission to implement Section 207 to MDUs so that DBS providers and other MVPDs can access all MDUs and provide service to all MDU consumers.

5. Under the proposed rules, the incumbent cable operator is the gatekeeper to competition because the incumbent cable operator would have the option to abandon,

sell, or remove its wiring to either the MDU owner or a competing MVPD. None of these options adequately ensure that building residents will gain access to competing MVPD services. Abandoned wiring could be left in damaged or inoperable condition or the incumbent may offer the wiring at excessively high prices. As a result, a competing MVPD would not be able to use or afford the existing wire. The right of the incumbent to remove the wiring without first being required to sell it truly thwarts competition. The incumbent could use the threat of removal to continue contracting exclusively with an MDU owner, since the MDU owner may wish to avoid property damage resulting from the removal of the wiring. NRTC urges the Commission to modify its rules so that the incumbent cable operator does not control competition in the video programming market to MDUs. To that end, NRTC agrees with DirecTV that the rules should include two elections: (i) abandonment of the wiring in operable status; or (ii) sale of the wiring to a competing MVPD at a nominal rate. DirecTV Comments at 13.

6. Many of the pitfalls of the Commission's proposed rules can be avoided simply by moving the demarcation point to the cable lockbox. Under such a scheme, the rules for the disposition of home wiring would apply, and a cable operator would be required to sell its wiring to the subscriber at the replacement cost of the wire priced on a per-foot basis before the cable operator may remove its home wiring. As noted by CEMA, MAP and CFA, moving the demarcation point to the cable lockbox would allow an alternative service provider to attach its network quickly and easily to the wiring dedicated to the individual subscriber's unit. CEMA Comments at 2; MAP and CFA

Comments at 19. Furthermore, setting the demarcation point at the cable lockbox would permit a second entrant to provide service without destroying hallway walls or installing additional hallway moldings.

### **III. CONCLUSION**


Access to home run and home wiring is vital for MVPDs to provide competition to incumbent cable providers in MDUs. The Commission's proposed rules do not go far enough to promote competition. To that end, NRTC urges the Commission to apply Section 207 to MDUs so that other MVPDs may provide service to an MDU, require incumbents to sell wiring before abandoning or removing it, and move the demarcation point to the cable lockbox.

**WHEREFORE, THE PREMISES CONSIDERED**, the National Rural Telecommunications Cooperative urges the Commission to consider these Reply Comments and to revise its rules in accordance with the views expressed herein.

**Respectfully submitted,**

**NATIONAL RURAL  
TELECOMMUNICATIONS COOPERATIVE**

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